(19,411.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 311.

ALABAMA GREAT SOUTHERN RAILWAY COMPANY

vs.

H. C. THOMPSON, ADMINISTRATOR OF FLORENCE JAMES, DECEASED.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 11, 1905.

1 United States Circuit Court of Appeals, Sixth Circuit.

ALABAMA GREAT SOUTHERN RY. CO., Plaintiff in Error,
v.
H. C. THOMPSON, Administrator, Defendant in Error. } No. 1285.

Error to the Circuit Court of the United States for the Eastern District of Tennessee.

Before Lurton, Severens, and Richards, circuit judges.

This was an action in tort brought by the administrator of Florence James for the negligent killing of the intestate by the defendant railroad company.

The suit was started in a circuit court of the State of Tennessee and a declaration was there filed.

The plaintiff was a citizen of Tennessee.

The defendants were The Alabama Great Southern Railway Company, a corporation organized under the laws of Alabama, and Wm. H. Mills and Edgar Fuller both citizens of the State of Tennessee.

The case was then removed into the court below upon petition of the railroad company alone upon the ground that a separable controversy, involving more than $2,000.00 exclusive of interest and costs, existed between the petitioner and the plaintiff as to whom diversity of citizenship existed, which could be tried out without the presence of either of the individual co-defendants of petitioner.

A motion to remand to the State court because no removable separable controversy appeared was overruled.

2 Thereupon an issue was made and the case heard by court and jury and a judgment rendered in favor of the plaintiff and against the railroad company alone.

From this judgment the railroad company sued out this writ of error.

Upon the hearing in this court, the court raised the question as to whether the court below had rightfully acquired jurisdiction by the removal proceedings referred to, the removal being grounded only upon the question of separable controversy appearing upon the face of the declaration of the plaintiff at the time of the application for removal.

That declaration substantially averred that the intestate of the plaintiff had been negligently, wrongfully and carelessly run over while upon the track of the railroad company, in the exercise of due care, by an engine and train of cars owned and operated by the railroad company, which said train was at the time under the management and control of the individual defendants Wm. H. Mills as conductor and Edgar Fuller as engineer.

Entertaining grave doubt as to whether a joint right of action was stated against the railroad company and the two individual defend-

ants who were servants of the railroad company, it is ordered that the foregoing statement be certified to the supreme court and that the instruction of that court be requested for the proper decision of the following questions which arise upon the record :

1. May a railroad corporation be jointly sued with two of its servants, one the conductor and the other the engineer of one of its trains, when it is sought to make the corporation liable only by reason of the negligent act of its said conductor and engineer in the operation of a train under their management and control and solely upon the ground of the responsibility of a principal for the act of his servant, though not personally present or directing and not charged with any concurrent act of negligence?

2. Is such a suit removable by the corporation, as a separable controversy, when the amount involved exceeds $2,000.00 ex-
3 clusive of interest and costs, and the requisite diversity of citizenship exists between the said company and the plaintiff, the citizenship of the individual defendants sued with the company as joint tort feasors being identical with that of the plaintiff?

HORACE H. LURTON,
HENRY F. SEVERENS,
JOHN K. RICHARDS,
Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Sitting in said Case.

June 29, 1904.

4 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, Sixth Judicial Circuit, } ss:

I, Frank O. Loveland, clerk, of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing certificate and statement of facts in the case of The Alabama Great Southern Railway Company, plaintiff in error, *versus* H. C. Thompson, administrator, defendant in error, No. 1285, was duly filed and entered of record in my office by order of said court, and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of Cincinnati, Ohio, this 29th day of June, A. D. 1904.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk United States Circuit Court of Appeals,
Cincinnati, Ohio.

Endorsed on cover: File No. 19,411. U. S. circuit court of appeals, 6th circuit. Term No. 311. Alabama Great Southern Railway Company *vs.* H. C. Thompson, administrator of Florence James, deceased. Filed July 7th, 1904. File No. 19,411.

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JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. ~~III.~~ 58.

ALABAMA GREAT SOUTHERN RAILROAD COMPANY,

vs.

H. G. THOMPSON, ADMINISTRATOR OF FLORENCE JAMES, DECEASED.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Brief for Alabama Great Southern Railroad Company in Support of the Right of Removal.

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